



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97231; File No. SR-NYSEAMER-2023-22]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Make a Clarifying Change to the Term Settlement Style Applicable to Flexible Exchange Options

March 31, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on March 22, 2023, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 under Rule 903G to make a clarifying change to the flex term settlement style applicable to Flexible Exchange (“FLEX”) Options. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 under Rule 903G to make a clarifying change to the flex term settlement style applicable to FLEX Options.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. Commentary .01 under Rule 903G currently states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same settlement style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index.⁴ The rule also provides that FLEX Options are permitted before the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules, however, in the event a Non-FLEX series is added intra-day, the holder of a position established under FLEX Trading Procedures would be permitted to close such position using FLEX trading procedures against another closing only FLEX position for the balance of the trading day on which the series is added.⁵

Commentary .01 to Rule 903G is designed to prevent the trading of a FLEX Option that has the exact same terms (underlying security, exercise style, settlement style, expiration date

⁴ See Rule 903G, Commentary .01.

⁵ Id.

and exercise price) as a non-FLEX Option. In other words, as long as just one term of the FLEX Option is different from an existing “regular” or “non-FLEX” option it may be traded as a FLEX Option.

Under Exchange rules, certain FLEX Equity Options where the underlying security is an Exchange-Traded Fund are permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.⁶ The purpose of this proposed rule change is to amend Commentary .01 under Rule 903G to clarify that the reference to “same settlement style” in the rule applies to FLEX Index Options and not to the FLEX ETF Options permitted for listing and trading pursuant to Rule 903G(c)(3)(ii).⁷ As proposed, the first sentence in Commentary .01 under Rule 903G would be modified to state that “provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same settlement style (with respect to FLEX index options only), same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index.” As a result of this change, for FLEX ETF Options, at least one of the following terms - exercise style, expiration date and exercise price - must differ from options in the non-FLEX market. The Exchange believes the proposed rule change will add clarity and certainty regarding the flex term settlement style applicable for FLEX Options listed and traded on the Exchange.

2. Statutory Basis

⁶ Rule 903G(c)(3)(ii) provides that the exercise settlement for a FLEX ETF Option may be by physical delivery of the underlying security or by delivery in cash if the underlying security, measured over a six-month period, has an average daily notional value of \$500 Million or more and a national average daily volume (ADV) of at least 4,680,000 shares. See also Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR-NYSEAmerican-2019-38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Flexible Equity Options To Be Cash Settled).

⁷ See Securities Exchange Act Release No. 79125 (October 19, 2016), 81 FR 73452 (October 25, 2016) (SR-NYSEMARKT-2016-48) (Adding 2 new settlement styles for FLEX Index Options - Asian and Cliquet - and adding a reference to settlement style in Commentary .01 under Rule 903G).

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that clarity regarding the flex term settlement style applicable for FLEX Options will promote fair and orderly markets by eliminating potential confusion and would allow ATP Holders and investors with additional opportunities to trade customized options in an exchange environment.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to more clearly describe the current operation of an existing rule without changing its substance and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2023-22 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2023-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2023-22 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-07140 Filed: 4/5/2023 8:45 am; Publication Date: 4/6/2023]

¹⁵ 17 CFR 200.30-3(a)(12).